

Members

Sen. Jeff Drozda, Chairperson
Sen. Greg Walker
Sen. John Broden
Sen. Timothy Lanane
Rep. David Niezgodski
Rep. Nancy Dembowski
Rep. Phil Hinkle
Rep. Milo Smith
Chuck Williams
Andy Cook
Barbara Krisher
C. Pete Peterson
Patti O'Callaghan
Mark Catanzarite
Ken Buck
Tom Bodkin



ANNEXATION STUDY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Anne Haley, Attorney for the Committee
Chris Baker, Fiscal Analyst for the Committee

Authority: P.L. 224-2007 (HEA 1478-2007)

MEETING MINUTES¹

Meeting Date: September 26, 2007
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Jeff Drozda, Chairperson; Sen. Greg Walker; Rep. David Niezgodski; Rep. Nancy Dembowski; Rep. Phil Hinkle; Rep. Milo Smith; Chuck Williams; Andy Cook; Barbara Krisher; C. Pete Peterson; Patti O'Callaghan; Mark Catanzarite; Ken Buck; Tom Bodkin.

Members Absent: Sen. John Broden; Sen. Timothy Lanane.

1. Call to order and introduction of Committee members and staff.

After Sen. Drozda called the meeting to order at 10:12 a.m., the Committee members and staff introduced themselves.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

2. Witness testimony and discussion.

Matt Milam, President, Concerned Citizens of Home Place, submitted his written comments (Exhibit 1). Mr. Milam made the following remarks:

- The effort to remonstrate against Carmel's annexation of Home Place required 150 volunteers and 20,000 man hours. Fundraising for legal expenses resulted in \$75,000 in donations, but an additional \$25,000 is needed. In contrast, cities have taxpayer funds available to pay for annexations.
- Forced annexations should be abolished in Indiana. Indiana is one of only six states that allow forced annexations.
- Cities hold annexation hearings on the day after a holiday, when residents of the territory are unavailable. Remonstrators are forced to obtain signatures on the remonstrance petition in the middle of winter.

In response to questions, Mr. Milam said that he agreed that people who reside outside of a municipality should pay user fees for any services provided by the city. He opposes Carmel's annexation because the city has been fiscally irresponsible and has incurred substantial debt.

Dan Jones, Acting Budget Director, Indiana Department of Local Government Finance (DLGF), distributed "Annexation Fiscal Plans" (Exhibit 2). Mr. Jones made the following remarks:

- In an excess levy appeal, the Local Government Tax Control Board and DLGF review the municipality's fiscal plan. The projected tax impact that the municipality includes in the fiscal plan is considered in deciding whether to grant the appeal.
- The Local Government Tax Control Board sunsets at the end of 2008 and the responsibility is transferred to the new County Board of Tax and Capital Projects Review. Annexation excess levy appeals sunset at the end of 2009.
- The law could be changed to allow the DLGF to routinely review all fiscal plans at the beginning of the annexation process. The DLGF has the expertise necessary to review fiscal plans. The review process could be similar to the current capital project approval/ review process or cumulative funds review process.
- The reviewing agency could conduct a public hearing, at which landowners could appear to provide their input regarding the fiscal plan. In response to Committee questioning, Mr. Jones said that he has not considered what standards would be used by the reviewing agency to analyze a fiscal plan.

Eugene Thompson submitted a summary of his testimony. (Exhibit 3). He described his experience when Zionsville attempted to annex his neighborhood. Mr. Thompson made the following comments:

- Annexation has the effect of voiding the votes that residents of the annexation territory cast for their township government.
- The remonstrance process is a tremendous burden for people to undertake and many neighborhoods lack the resources for a remonstrance.

- If remonstrators are unable to contact the landowners of some parcels in the annexation territory, the number of parcels available to remonstrate decreases and the remonstrance threshold effectively increases.
- If some property owners in an annexation have signed sewer waivers, it can have the effect of disenfranchising property owners who have not signed sewer waivers, because the 65% threshold needed for a remonstrance cannot be met.
- The Committee should look at how they define what parcels are eligible for a remonstrance.
- Reduce the remonstrance threshold from 65% to 51%.
- Instead of a remonstrance procedure, the law should allow a referendum on each annexation.

Rachel Quade, Geist United Opposition, explained that she is a volunteer working on the effort to fight annexation of Geist by Fishers. She distributed a summary of her comments (Exhibit 4):

- Current law places an enormous burden on citizens who want to remonstrate by requiring them to become experts in municipal law and fundraising. The remonstrators face opponents who have expertise in the annexation process.
- The annexation process has a divisive effect on a community.
- Municipalities do not have the right to grow by trampling over the rights of citizens.
- In order to prevent annexation, Geist is incorporating into two towns. Geist opposes annexation because it wants to retain its unique identity and not become absorbed into the bigger town of Fishers.
- An annexation should be determined by a referendum rather than by remonstrance.
- In response to questions from the Committee, Ms. Quade said that Fishers could charge nonresidents a user fee for using the town parks.

Rick Carlucci, Town Manager of Plainfield, discussed the positive effect that annexation has had on Plainfield, resulting in an expansion of the town from 3.4 square miles in 1988 to its current size of 21.9 square miles. Mr. Carlucci detailed the town's expansion of business and industry and described the town's services. Mr. Carlucci made the following points:

- Although Plainfield has done many annexations over the past 18 years, no remonstrances have been filed. He suggests that the town's success is due to the way Plainfield has conducted the annexations. Plainfield makes annexation attractive by offering landowners quality services. Landowners subject to annexation are provided with detailed information regarding the services they will receive as a result of the annexation and the fiscal plan is written very carefully to avoid any disputes.
- Making annexation too restrictive will prevent municipalities from pursuing economic development.

- Annexation does not result in a windfall to municipalities. Plainfield has chosen not to annex areas for which the town is already providing sewer and water, because the annexation will be too costly.
- Tax rates have remained fairly constant over the years. The goal has been to make the town an affordable place to live.
- Many successful annexations have occurred around the state that the public is not aware of.

Nicholas K. Kile submitted a copy of his remarks to the Committee (Exhibit 5). Mr. Kile, an attorney for Barnes and Thornburg, L.L.C., stated that he appeared before the Committee to present his own views about annexation and not those of a client. Mr. Kile presented a draft of changes to the annexation law that are based on what he described as his "Four Basic Truths" of annexation:

- *Municipalities should not annex places where they do not provide services, regardless of how few landowners may object.* This "Truth" addresses the situation of Aboite Township, which was annexed by Fort Wayne although it did not rely upon the city for services.
- *Municipalities should be permitted to annex places where they do provide services regardless of how many landowners object.* An urban area that arises outside the boundaries of a municipality often owes its development to the municipality's direct or indirect provision of services to the area. It is not fair for the people living in these outlying areas to pick and choose the services that they receive. People move out of the municipalities to these outlying areas resulting in a reduction of the municipality's tax base and urban blight.
- *Nothing should stand in the way of a municipality annexing its utility service area.* Towns should be treated equal to cities under the annexation law. A town is required to obtain the consent of a city before it annexes territory within a certain distance of the city except when the annexation is petitioned for by landowners. This exception can have unintended consequences. If a city has extended services to territory and wants to annex it, landowners can defeat it by petitioning a nearby town for annexation. Conversely, a town that wants to annex territory to which it has already extended services can be defeated if a nearby city refuses to consent to the annexation.
- *Subject to the first three Basic Truths, someone who wants to be annexed in order to receive municipal services should be permitted to do so even if their property is not contiguous.* This addresses municipalities' current practice of "gerrymandering" territories that they annex in order to achieve contiguity between the municipality and an economic development project.

Mr. Kile said that the draft makes additional changes that clarify the annexation law. The Committee discussed the situation where an area receives services from more than one unit of government. In response to a question from Committee member Barbara Krisher, Mr. Kile said that the draft may have to be amended to address the unique situation where a city provides service to an area by acquiring a private sewer and water utility by eminent domain.

Larry Brenner distributed a handout entitled "Whitestown Annexation Errors".

(Exhibit 6). Mr. Brenner explained that he resides in the community of Fayette, which Whitestown is trying to annex. Mr. Brenner discussed the errors made by Whitestown in the annexation, including an inaccurate legal description of the annexation territory and inadequate notice to the landowners in the territory. Mr. Brenner made the following remarks:

- Residents of his community do not want Whitestown's services, which are less than the county services they currently receive.
- Purchasers of land in a subdivision should be notified by the developer that the land they are purchasing is subject to a sewer waiver.
- An oversight agency is needed to review annexations. Despite Whitestown's many errors, the annexation will stand unless there is a remonstrance and it goes to court.

E.M. Cavalier explained that he is a veteran of several annexations. Mr. Cavalier made the following points:

- None of the testimony has been totally opposed to annexation. A positive way to achieve annexation needs to be found.
- Annexation should have a beneficial purpose, but the question arises who should decide whether an annexation is beneficial. In Florida, both the municipality and the landowners must approve an annexation.
- Just as cities and towns can develop a fiscal plan, entities with a significant financial base should be able to govern themselves. Annexation should occur in a democratic way.

Jack Holton, Southwest Clay Community Association, urged the Committee to develop legislation to enable an annexation to be evaluated as to whether the purpose of annexation is to correct the overspending of the municipality or whether the purpose is to develop the annexation territory. He said it is the Committee's job to put landowners on an equal plane with the municipality.

3. Other business/adjournment

Sen. Drozda said that the fourth meeting of the Committee would be held on October 10 and the fifth meeting of the Committee would be held on October 24th. He said that at the next meeting the Committee would address the issue of sewer waivers and receive testimony. The Committee would then have a general discussion of what direction they want to take. He said that the Committee could make specific or general recommendations or no recommendations at all. Sen. Drozda adjourned the meeting at 1:23 p.m..